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10/012,198	12/03/2001	Alan Christopher John Worrel	22061	5277

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EXAMINER

FOX, CHARLES A

ART UNIT PAPER NUMBER

3652

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/012,198

Applicant(s)

WORREL ET AL.

Examiner

Charles A. Fox

Art Unit

3652

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Amendment A filed on January 6, 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 15, 16, 23, 29-34, 36 and 37 is/are rejected.
- 7) ☒ Claim(s) 13, 14, 17-19, 21, 22, 24-28 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Information Disclosure Statement***

The information disclosure statement mentioned in paper 6 was not with the reply. Applicant is asked to send it along with the response to this office action and it will be considered at that time. Applicant is required to send the foreign search report, but does not need to send any references already of record in regards to this application.

***Claim Objections***

Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 14 has exactly the same limitations as the claim from which it depends.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what the applicant is trying to claim based upon the figures. There is no figure showing the lowermost pallet being in the same plane of the entry point of the supply lanes. In fact the supply lanes have 3 different vertical heights relative to the bottommost pallet in the pallet receiving means.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,6,9,29,30,32,33,36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clerc in view of Stobb. In regards to claims 1-4,6,9,29,30,36 and 37 Clerc US 2,096,958 teaches a pallet live storage system comprising:

- a supply lane(48) for loaded pallets (28);

- a return lane (53) for emptied pallets for reloading.

Clerc does not teach a reorienting means between the two lanes.

Stobb US 4,019,639 teaches a device for collecting rows of material comprising:

- a rack structure (13) for receiving rows of material (10);

- a pivot (17) for said rack;

- an erector arm (21) for engaging a horizontal object and raising the object to a substantially vertical orientation;

- drive means (32) for raising said arm;

- wherein said material is placed in at least one row on said rack;

- stop means (49,51) to limit the movement of the rack;

- a drive means (44) for pivoting the rack;

and said rack is pivoted about a horizontal axis and relative to its supporting structure (19) to form a vertical stack from said rows to facilitate lifting of said stack by a forklift. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the system taught by Clerc with the stack former taught by Stobb in order to allow the system to accumulate the pallets in an easy to handle manner.

In regards to claims 32 and 33 Clerc further teaches that ramps (53) are provided on the pallet return lane and that said ramps have a low friction surface in the form of rollers.

Claims 5,7,8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clerc and Stobb as applied to claims 1,4 and 9 above, and further in view of Dykstra. In regards to claim 5 Clerc in view of Stobb teach the limitations of claim 4 as above, they do not teach the pivoting rack as having translational motion. Dykstra teaches a device for pivoting pallets (32), wherein said system pivots about an axis (34) and has translational movement relative to its support structure as well. See figure 2. It would have been obvious to one of ordinary skill in the art, at the time of invention to modify the device taught by Clerc and Stobb with the translational movement as taught by Dykstra in order to allow the pallets to be presented at a location that is optimal for unloading the pallets from the rack that would not be possible in a purely rotational system.

In regards to claims 7,8,10-12 Dykstra further teaches the use of sensors to determine the position of the pivoting rack, determining how many pallets may be on the rack at any given time as well as sensing when pallets are to be loaded onto the rack

from a waiting position, wherein all sensors are connected to a controller for operation of the system for optimal output, he further teaches using conventional controllers as desired such as a manual controller. See column 7 line 47 to column 8 line 14.

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the control system taught by Dykstra on the device taught by Clerc and Stobb in order to allow the system to operate automatically or manually as desired by the operator of the device.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clerc and Stobb as applied to claim 1 above, and further in view of Springer. Clerc and Stobb teach the limitations of claim 1 as above, they do not teach a latching mechanism on the pivoting rack. Springer US 1,977,497 teaches a rack (6) for pivoting a row of vertical objects to a horizontal position, wherein the device has a latch assembly for securing the device in a particular position and said latch assembly has a detent. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the latching mechanism taught by Springer to the device taught by Clerc and Stobb in order to positively lock the device in place thereby increasing its operational safety by providing for a positive lock against pivoting of the rack.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clerc and Stobb as applied to claim 1 above, and further in view of Ferrisi et al. Clerc and Stobb teach the limitations of claim 1 as above, they do not teach using a friction damper on the pivoting rack. Ferrisi et al. US 5,950,771 teach using a friction damper to minimize vibration and dissipate energy from a rotating shaft. It would have been

obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Clerc and Stobb with a friction damper as taught by Ferrisi et al. in order to allow the device to pivot in a smooth and controlled manner.

In regards to claim 34 it would have been obvious to one of ordinary skill in the art, at the time of invention to use a conveyor belt to move the pallets up the incline as conveyor belts are well known in the art for moving objects along both inclined and horizontal paths.

### ***Response to Amendment***

The amendments to the specification, drawings and claims filed on January 6, 2004 has been entered into the record. These amendment have overcome the 35 U.S.C. § 112 rejections from the previous action, with the exception to claim 31.

### ***Allowable Subject Matter***

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of Clerc does not teach or suggest any part of the pallet return ramp being attached to the pallet receiving means for movement therewith.

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of Clerc does not teach or suggest using guards on his device.

Claims 17-19 and 24-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 17 has the limitation of a second latching means, which the closest prior art of Springer does not teach or suggest.

Claims 21 and 22 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 21 has the limitation of the pallet receiving means pivoting under the weight of pallets placed upon it, the closest prior art of Stobb does not teach or suggest that this operation be predicated on fully loading the pallet receiving means with pallets.

### ***Response to Arguments***

Applicant's arguments filed January 6, 2004 have been fully considered but they are not persuasive. In regards to the combination of Clerc and Stobb applicant argues that Clerc does not teach stacking pallets, but merely providing a stream of pallets in a warehousing facility. The examiner agrees with this assertion as to the function of the Clerc reference, but points out that the Stobb reference was used to remedy this deficiency in the Clerc reference in regards to the claims. Applicant also argues that the instant invention would have been invented before as both the Clerc and Stobb reference have been public knowledge since 1977. This is speculation and can not be proven or disproved. However the reason there has not been a patent with their combined teaching is that an invention of this sort has always been seen as being

obvious to one of ordinary skill in the art. Based on such the combination is deemed to be valid and any rejection based on this combination stand as before.

In regards to claims 32 and 33, the Clerc reference teaches exactly what is claimed in these two claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., assisting the operator in lifting a pallet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The arguments for claim 5 also deal with limitations that are not present in the claim. The claim does not recite simultaneous rotation and translation of the pallet receiving means. As such the Dykstra reference does teach the limitations of the claim when combined with the Clerc and Stobb references. It is noted that claims 7,8,10 and 11 are mentioned in this argument, but no reasons for withdrawing the rejections of these claims are given, therefore the rejections stand as before.

In regards to the arguments against the rejections of claims 15,16 and 23, the applicant goes back to the combination of Clerc and Stobb with no reference to the third reference present in the rejections. The combination of Clerc and Stobb has been addressed above and is considered a valid rejection by the examiner.

In regards to the arguments against the rejection of claim 34 the examiner has not asserted that the belt is driven at all. But rather that conveyor belt are well known in

the art. Applicant is also arguing for the intended use of the belts, which is not a limitation that is presently in the claim. The previous rejection stands.

Applicant's arguments, see page 18, filed January 6, 2004, with respect to claim 35 have been fully considered and are persuasive. The rejection of claim 35 has been withdrawn.

In regards to the 35 U.S.C. 112 rejection of claim 31 please refer to newly amended figure 1. In this figure there are shown two pallet receiving means (not numbered) each of which is located directly to the left of ramps (30). There are two sets of tiered supply lanes (6) in this figure, where the entry ends of these supply lanes are at different levels. As the supply ends are at a fixed level as are the pallet receiving means there is no way for the lowermost pallet to be arranged at the level of the entry ends of the supply lanes. Further more according to the left most pallet receiving means in figure 1 its lowermost pallet does not correspond to the entry end of a supply lane. The specification is also silent on how the limitations of the claim are met. Therefore the claim language must be changed to reflect the actual structure of the invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3652

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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